

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 29, 2009

No. 08-60796
Summary Calendar

Charles R. Fulbruge III
Clerk

EDDIE JAMES SHORTY

Plaintiff-Appellant

v.

E L SPARKMAN, Commissioner of Corrections, Individually and in His Official Capacity; LAWRENCE KELLY, Superintendent for Mississippi State Penitentiary, Individually and in His Official Capacity; JOHN ROGERS, Associate Warden at Unit 32, Individually and in His Official Capacity; EMMIT SPARKMAN; HENDERSON THOMAS, Captain

Defendants-Appellees

Appeal from the United States District Court
for Northern the District of Mississippi
USDC No. 4:07-CV-150

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

Eddie James Shorty, Mississippi prisoner # 26507, appeals the district court's dismissal with prejudice of his 42 U.S.C. § 1983 suit and the denial of his motions for injunctive relief. Shorty, however, fails to address the district court's reasons for denying him relief. Because Shorty does not address on appeal the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

district court's reasons for dismissing his civil rights action and for denying him injunctive relief, he has abandoned the only issues arguably on appeal. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993); *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Moreover, to the extent that Shorty is arguing that his cell at Unit 29-G is too small and that he does not receive enough time in the dayroom and outside, those claims are raised for the first time on appeal and will not be considered by this court. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999).

Shorty's appeal is without arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). It is therefore dismissed. 5TH CIR. R. 42.2. The district court's dismissal and the dismissal of Shorty's appeal count as two strikes for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996). Shorty is cautioned that if he accumulates three strikes, he will no longer be allowed to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. *See* § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.